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MOTOROLA INC
600 NORTH US HIGHWAY 45
W4 - 39Q
LIBERTYVILLE, IL 60048-5343

EXAMINER
DUONG, OANH L

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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DOCKETING.LIBERTYVILLE@MOTOROLA.COM
ADB035@Motorola.com

	Application No.	Applicant(s)
Office Action Summary	10/083,876	RIORDAN, KENNETH
	Examiner	Art Unit	
	OANH DUONG	2455	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>03</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>06 March 2009</u>.

2a) ☒ This action is **FINAL**.   2b)☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>1,2,4,5,8-11 and 13-17</u> is/are pending in the application.

     4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) <u>1, 2, 4-5, 8-11, 13-17</u> is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

     a)☐ All   b)☐ Some * c)☐ None of:

       1. ☐ Certified copies of the priority documents have been received.

       2. ☐ Certified copies of the priority documents have been received in Application No. _____.

       3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

     * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail. Date. _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

1.   Claims 1, 2, 4, 5, 8-11, 13-17 are presented for examination.

        Claims 3, 6, 7, 12, and 18-19 have been canceled.

2.   The text of those sections of Title 35, U.S. Code not included in this action can
be found in a prior Office action.

3.   Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Metz**, US
5,978,855, in view of **Levitan**, Us 6,965,913 B2.

        Regarding claim 1, **Metz** teaches a network software downloading method *(i.e.,
method for downloading software through a network, col. 5 lines 14-17)*, comprising:

        communicating terminal unique information *(i.e., download initiation)* for
downloading of common software content *(i.e., software)* from the network to a plurality
of terminals *(i.e., terminals 100, Fig. 1)* in the network on corresponding dedicated
communication channels *(i.e., two-way narrowband data communication network 16,
Fig. 1)* for each terminal *(i.e., col. 8 lines 19-30, col. 11 lines 11-27 and col. 19 line 64-
col. 20 line 35)*;

        sending a message to the plurality of terminals on corresponding dedicated
communication channels to receive the common software content on a shared channel
*(i.e., the network 16 provides two-way narrowband data communication between the
terminals 100 and text server 16. The text server 18 transmits an instruction/message to*

the terminals 100 to select a channel carrying the software, col. 8 lines 19-30 and col.

19 line 64- col. 20 line 35);

transmitting the common software content from the network to the plurality of

terminals on the shared communication channel (i.e., broadcast channel) after sending

the message *(Fig. 1 col. 8 lines 19-60 and col. 11. lines 7-32: Metz discloses application*

files are downloaded/transmitted from software server 12 to terminal(s) 100 via a

broadcast channel); and

multiplexing a plurality of different common software content on the shared

communication channel *(i.e., the multiplexed data files may utilized the entire 6*

Mbits/transport stream rate for broadcast channel, col. 11 lines 1-10).

Metz does not dynamically adjusting the plurality of different common software

content in proportion to a changing number of the plurality of terminals receiving the

plurality of different common software content.

Levitan teaches system wherein content delivery in broadcast radio is provided

(see abstract). **Levitan** teaches adjusting the plurality of different common software

content in proportion to a changing number of the plurality of terminals receiving the

plurality of different common software content (Applicant's specification defines, "the

software content multiplexed on the shared communication channel is adjusted

dynamically by adjusting a transmission time of each of the plurality of software files" in

page 7 lines 25-27. Levitan discloses each file is transmitted for a period of time

proportional to a number of clients requested the file, col. 7 lines 8-20. Therefore,

Levitan does teach adjusting the plurality of different common software content in

proportion to a changing number of the plurality of terminals receiving the plurality of

different common software content as defined in applicant's specification).

It would have been obvious to one of ordinary skill in the art at the time of the

invention was made to modify the teachings of **Metz** to dynamically adjusting the

plurality of different common software content in proportion to a changing number of the

plurality of terminals receiving the plurality of different common software content as

taught by **Levitan**. One would be motivated to do so to overcome both slow

downloading and traffic jams (**Levitan**, col. 2 lines 57-58).

4.   Claim 8 is are rejected under 35 U.S.C. 103(a) as being unpatentable over **Metz**

in view **Levitan and Matsuzaki** et al. ("Matsuzaki"), US 2001/0040889 A1**.**

Regarding claim 8, **Metz teaches** the method of claim 1.

The combination of teachings of **Metz and Levitan** does not explicitly teach

dynamically adjusting the plurality of different common software content based on a

priority factor.

Matsuzaki teaches a device wherein multiplexing of each of the information

based on the priority is controlled (abstract). **Matsuzaki** teaches dynamically adjusting

the plurality of different common software content based on a priority factor (i.e.,

"controlling multiplexing of each media information according to the decided priority",

page 2 paragraph [0021]).

It would have been obvious to one of ordinary skill in the art at the time of the

invention was made to modify the combination of teachings of **Metz and Levitan** to

dynamically adjusting the plurality of different common software content based on a

priority factor as taught by **Matsuzaki**. One would be motivated to do so to enable

multiplexing of information flexibly and efficiently (**Matsuzaki**, page 1 paragraph [0013]).

5.   Claims 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Metz in view **Levitan and Brassil** et al. (hereafter, Brassil), US 2002/0187776 A1.

Regarding claim 2, **Metz** teaches the method of claim 1, receiving a request for

the common software from a plurality of terminals on corresponding dedicated

communication channel for each terminal (*i.e., terminal(s) 100 transmit(s) the input*

through the data channel (i.e., dedicated communication channel) to the text server 18,

Fig. 1 col. 20 lines 23-25),

transmitting the common software content from the network to the plurality of

terminals making the request on the shared communication channel after receiving the

request *(i.e., the software server 12 transmits selected information through the*

broadcast channel, col. 20 lines 30-35);

The combination of teachings of **Metz and Levitan** does not explicitly teach

receiving confirmation from each of the plurality of terminals that received the software

content on corresponding dedicated communication channels for each terminal after

transmitting.

Brassil teaches teach receiving confirmation from each of the plurality of terminals that received the software content on corresponding dedicated communication channels for each terminal after transmitting *(i.e., confirmation that the download has been completed is received by the service provider, pages 2-3 paragraph [0034).*

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the combination of teachings of **Metz and Levitan** to receive confirmation from each of the plurality of terminals that received the software content for each terminal after transmitting as taught by **Brassil**. One would be motivated to do so to enable user's account to be credited once confirmation the download has been completed is received (**Brassil**, page 2 paragraph [0034], lines 4-7).

Regarding claim 4**, Metz-Levitan-Brassil** teaches the method of claim 1, receiving confirmation from each of the plurality of terminals that received the common software content on corresponding dedicated communication channels for each terminal after transmitting *(i.e., Brassil, confirmation should be sent over the slow speed network, page 3 paragraph [0034] line 1-4).*

6.   Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Metz**, in view of **Levitan and Wiehler**, US 6,850,915 B1.

Regarding claim 5, **Metz** teaches the method of claim 1, transmitting/exchange data message relating to an interactive service from the network to a plurality of terminals over corresponding dedicated channels for each terminal (i.e., provide two-way, low-speed data communications capacity, e.g., for signaling and/or interactive text service between text server 12 and terminal(s) 100, Fig. 1, col. 5 lines 18-21);

transmitting the common software content from the network to the plurality of terminals on the shared communication channel after exchanging data message *(Fig. 1 col. 8 lines 19-60 and col. 11. lines 7-32: Metz discloses application files are downloaded/transmitted from software server 12 to terminal(s) 100 via a broadcast channel).*

The combination of teachings of **Metz and Levitan** does not explicitly teach transmitting data message such as a digital signature from the network to terminal.

Wiehler teaches providing/transmitting a digital signature from the network to (col. 5 line 34- 61).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the combination of teachings of **Metz and Levitan** to provide digital signature to terminal before software downloading as taught by **Wiehler.** One would be motivate to do so to enhance the security of the system (Wiehler, col. 6 lines 17-19).

7.   Claims 9-11, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable

over **Tanaka** et al. (hereafter, Tanaka), U.S. Patent No. **6,671,509** B1 in view of

Levitan, US 6,965,913 B2.

        Regarding claim 9, **Tanaka** teaches a radio communication network software

loading method *(i.e., transmitting/downloading software from base station to mobile*

communication unit(s) via a radio link, Fig. 1 col. 2 lines 22-39 and col. 12 lines 15-28),

comprising:

        transmitting software content from a radio communication network to a plurality of

terminals in the network by multiplexing the software content on a shared

communication channel (broadcast channel) received by the plurality of terminals *(col. 3*

lines 47-51, col. 4 lines 48-58, col. 8 lines 11-61, and col. 12 lines 14-28: Tanaka

discloses system software, which includes system software items, is transmitted from

base station to mobile station(s) via radio link based on a time-division multiplex

transmission scheme using a broadcast channel); and

        the software content comprises a plurality of software files (i.e., a plurality of

different system software, for example, system software items 1-n, Fig. 3(a), col. 8 lines

19-23).

        Tanaka does not explicitly teach dynamically adjusting the software content

multiplexed/transmitted on the shard communication channel by adjusting a number of

times each of the plurality of files is transmitted.

Levitan teaches system wherein content delivery in broadcast radio is provided (see abstract). **Levitan** teaches dynamically adjusting the software content transmitted on the shared communication channel by adjusting a number of times each of the plurality of software files is transmitted (col. 3 lines 27-32: **Levitan** discloses the server continues to repeatedly (i.e., in a number of times) transmit each Internet file proportional to a number of clients requested that file. Therefore, number of times the file is transmitted is dynamically adjusted/changed according to a number of clients requested the file).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the teachings of **Tanaka** to dynamically adjust a number of times each of the plurality of files is transmitted as taught by **Levitan**. One would be motivated to do so to overcome both slow downloading and traffic jams (**Levitan**, col. 2 line 57-58).

Regarding claim 10, **Tanaka** teaches the method of claim 9, software content is multiplexed on the shared channel from a radio device management server (base station) in communication with the radio communication network *(i.e., the system software item may be divided and then transmitted from base station to mobile station(s) via radio channels, col. 6 lines 5-10 and col. 15 lines 58-67)*.

Tanaka does not explicitly teach dynamically adjusting the software content multiplexed/transmitted on the shared communication channel.

Levitan teaches **Levitan** teaches system wherein content delivery in broadcast radio is provided (see abstract). Levitan teaches dynamically adjusting the software content multiplexed/transmitted on the shared communication channel (i.e., col. 6 lines 62-67).

It would have been obvious to one of ordinary skill in the art the time of the invention was made to modify the teachings of Tanaka to dynamically adjusting the software content multiplexed/transmitted on the shared communication channel as Levitan. One would be motivated to do so to overcome both slow downloading and traffic jams (**Levitan**, col. 2 lines 57-58).

Regarding claims 11, **Tanaka-Levitan** teaches the method of claim 9, the software content comprises a plurality of different software files (Tanaka, col. 8 lines 19-23), dynamically adjusting the software content multiplexed/transmitted on the shared communication channel by adjusting a transmission time of each of the plurality of software files (Levitan, col. 6 lines 62-67).

Regarding claim 15, **Tanaka-Levitan** teaches the method of claim 9, the software content comprises a plurality of software files (Tanaka, *a plurality of system software items, col. 3 lines 49-51),* dynamically adjusting the content multiplexed/transmitted in the shared communication channel based on at least one of file size and a number of the plurality of terminals receiving the software files (Levitan, col. 6 lines 62-67).

8.   Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Tanaka**

, in view of **Levitan** and Young et al. ("Young"), US 5,541,919.

        Regarding claim 17, **TanaKa** teaches the method of claim 9.

        The combination of teachings of Tanaka and Levitan does not explicitly teach

fragmenting the software multiplexed on the shared channel by packetizing the software

content.

        Young teaches fragmenting the software multiplexed on the shared channel by

packetizing the software content (col. 1 lines 33-45).

        It would have been obvious to one of ordinary skill in the art at the time of the

invention was made to modify the combination of teachings of Tanaka and Levitan to

fragment the software multiplexed on the shared channel by packetizing the software

content as taught by Young. One would be motivated do so to gain more flexibility and

efficiency (Young col. 1 line 33).

9.   Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Tanaka,**

in view of **Levitan** and **Jennings** et al. ("Jennings"), U.S. Pub. No. **2002/0099842** A1.

     Regarding claim 13, **Tanaka-Levitan** teaches the method of claim 13, the software

content comprises a plurality of software files *(i.e., Tanaka, a plurality of system*

software items, col. 3 lines 49-51), dynamically adjusting the software content

multiplexed/transmitted on the shared communication channel *(i.e., Levitan, col. 6 lines 62-67)*.

The combination of teachings of **Tanaka and Levitan** does not explicitly teach prioritizing the transmission of software files that generates greater amounts of revenue relative to the transmission of software files that generate lesser amounts of revenue.

Jennings teaches content that generate more revenue receives priority during processing (page 24 paragraph [0300]).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the combination of teachings of **Tanaka and Levitan** to designate the content/file that generate more revenue to receive priority during the processing as taught by **Jennings** because it would allow the system, such as in Tanaka, to provide a high quality service to the user who costs more.

10.   Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Tanaka,** in view of **Levitan and Park** et al. (hereafter, Park), U.S. Patent No. **6,744,738** B1.

Regarding claim 14, **Tanaka-Levitan** teaches method of claim 9, the software content comprises a plurality of software files *(i.e., Tanaka, a plurality of system software items, col. 3 lines 49-51)*, dynamically adjusting the software content multiplexed on the shared communication channel *(i.e., Levitan, col. 6 lines 62-67)*.

The combination of **Tanaka and Levitan** does not explicitly teach prioritizing the transmission of more essential software files over the transmission of less essential software files.

Park teaches the wireless transmission system wherein a data transmission determiner for determining the transmission priority is provided (see abstract). Part teaches prioritizing the transmission of more essential data over the transmission of less essential data (col. 3 lines 7-42).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the combination of teachings of **Tanaka** and **Levitan** to prioritize the transmission of more essential data over the transmission of less essential data as taught by **Park**. One would be motivated to do so to allow data to be transmitted faster than the conventionally technology when the bandwidth of the allowed channel is small and the amount of data to be transmitted per unit time is large (**Park**, col. 4 line 33-38).

11.   Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Tanaka,** in view of **Levitan and Hamabe**, U.S. Pub. No. **2002/0115467** A1.

Regarding claim 16, **Tanaka** teaches the method of claim 9, receiving confirmation from each of the plurality of terminals that received the software content for each of terminal after transmitting (*i.e., the base station receives download completion notice from the mobile station(s), col. 6 lines 5-10 and col. 7 lines 46-61*).

The combination of teachings of **Tanaka and Levitan** does not explicitly teach receiving confirmation on corresponding dedicated channel.

Hamabe teaches receiving confirmation on corresponding dedicated channel after transmitting (i.e., when sending of data is completed, the mobile station uses the DPCH/dedicated channel to notify base station of end of data reception, page 7 paragraph [0077]).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the combination of teachings of **Tanaka and Levitan** to transfer confirmation via dedicated channel from mobile station as taught by **Hamabe**. One would be motivated to do so to prevent an increase in interference wave power resulting from an increase in transmission power of the dedicated channel to increase line capacity while increasing reliability of control information for carrying out high peed data communication from base station to mobile station(s) (**Hamabe**, page 4 paragraph [0027]).

Response to Arguments

12.   Applicant's arguments filed 03/06/2009 have been fully considered but they are not persuasive.

In the remark, applicants argued in substance that

(A)   Levitan suggests nothing about dynamically adjusting the plurality of different common software content multiplexed on the shared communication channel in

proportion to a changing number of the plurality of terminal receiving the plurality of different common software content.

As to point (A), Metz teaches multiplexing a plurality of different common software content on the shared communication channel (*i.e., the multiplexed data files may utilized the entire 6 Mbits/transport stream rate for broadcast channel, col. 11 lines 1-10*). Levitan teaches adjusting the plurality of different common software content in proportion to a changing number of the plurality of terminals receiving the plurality of different common software content (Applicant's specification defines: "the software content multiplexed on the shared communication channel is adjusted dynamically by adjusting a transmission time of each of the plurality of software files" in page 7 lines 25-27. Levitan discloses each file is transmitted for a period of time proportional/adjusted to/by a number of clients requested the file, col. 7 lines 8-20). Therefore, the combination of teachings of Metz and Levitan does suggest adjusting the plurality of different common software content in proportion to a changing number of the plurality of terminals receiving the plurality of different common software content as defined in applicant's specification).

(B)   Mets and Levitan fail to disclose dynamically adjusting the plurality of different common software content based on a priority factor.

As to point (B), Matsuzaki does teach dynamically adjusting the plurality of different common software content based on a priority factor (i.e., "controlling multiplexing of each media information according to the decided priority", page 2 paragraph [0021]).

(C)   Levitan suggests nothing about dynamically adjusting the software content multiplexed on the shared communication channel.

As to point (C), Tanaka teaches transmitting software content from a radio communication network to a plurality of terminals in the network by multiplexing the software content on a shared communication channel (broadcast channel) received by the plurality of terminals *(col. 3 lines 47-51, col. 4 lines 48-58, col. 8 lines 11-61, and col. 12 lines 14-28: Tanaka discloses system software, which includes system <u>sofware items, is transmitted</u> from base station to mobile station(s) via radio link <u>based on a time-division multiplex transmission scheme using **a** broadcast channel</u>)*. Applicant's specification defines: "the software content multiplexed on the shared communication channel is adjusted dynamically by <u>adjusting a transmission time of each of the plurality of software files</u>" in page 7 lines 25-27. Levitan discloses each file is transmitted for a period of time proportional/adjusted to/by a number of clients requested the file, col. 7 lines 8-20). Therefore, the combination of teachings of Tanaka and Levitan does suggest dynamically adjusting the software content multiplexed on the shared communication channel as defined in applicant's specification.

13.   As a result, the cited prior arts do disclose software downloading methods as broadly claimed by the applicants. Applicants clearly have still failed to identify specific claim limitations that would define a clearly patentable distinction over prior arts.

Conclusion

14.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to OANH DUONG whose telephone number is (571)272-

3983. The examiner can normally be reached on Monday- Friday, 9:30PM - 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Saleh Najjar can be reached on (571) 272-4006. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

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system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Oanh Duong/
Primary Examiner, Art Unit 2455